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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1940

No. 749

WELLS FARGO BANK & UNION TRUST CO.,
Petitioner and Appellant below,

vs.

COLLECTOR OF INTERNAL REVENUE,
Respondent and Appellee below.

PETITION FOR WRIT OF CERTIORARI
To the Supreme Court of the Philippines
and
BRIEF IN SUPPORT THEREOF.

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PETITION FOR WRIT OF CERTIORARI
To the Supreme Court of the Philippines.

To the Honorable Charles Evans Hughes, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

Your petitioner respectfully shows:

I.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

This is an action for declaratory judgment brought by the petitioner in the Court of First Instance of Manila, P. I., praying that judgment be rendered

declaring that the transfer by will of 35,000 shares of Benguet Consolidated Mining Company belonging to decedent, Birdie Lillian Eye, is not subject to Philippine inheritance taxes and may not validly be subjected thereto by the Philippine government, and further, that section 1536 of the Administrative Code of the Philippines, in so far as it may be construed as subjecting said shares to inheritance tax, is invalid and unconstitutional (Record, pages 1-5).

Birdie Lillian Eye died in California on September 16, 1932 (Record, page 47), being at the time of her death and for many years prior thereto a citizen of the United States and a resident of and domiciled in the State of California (Record, pages 47, 48). Decedent had a one-half community property interest, under the laws of the State of California, in 70,000 shares of Benguet Consolidated Mining Company (Record, page 53). The shares were acquired by Clyde Milton Eye, husband of said decedent, from his earnings during their married life, and were by written agreement dated October 15, 1926, expressly declared to be community property under the laws of the State of California (Record, page 53). Decedent's one-half community property interest in the 70,000 shares passed under her will, which was duly admitted to probate in the State of California, where her estate was administered and settled (Record, page 129). Clyde Milton Eye likewise was, and had been for many years prior to the death of Mrs. Eye, a resident of and domiciled in the State of California and a citizen of the United States (Record, page 445).

Estate taxes due to the United States on account of the shares as part of the estate of said decedent were paid (Record, pages 96, 100), as were the inheritance taxes levied thereon by the State of California (Record, pages 104, 105, 113, 116).

Benguet Consolidated Mining Company is an anonymous partnership (sociedad anónima) of the Philippine Islands (Record, page 129). At the time of Mrs. Eye's death, the shares were physically located in the Philippines (Record, page 60) in the possession of the Secretary of the company (Record, page 61). They stood in the name of Clyde Milton Eye, husband of the decedent (Record, page 61), were endorsed by him in blank (Record, page 62), but could not be disposed of except upon Mr. Eye's instructions (Record, page 62). They had been endorsed so that he could comply with the instructions of his wife (Record, page 62).

A trial was had before the Court of First Instance of Manila, sitting without a jury. The Court rendered judgment in favor of respondent, holding that the transfer of the shares was subject to the Philippine Islands succession tax imposed by section 1536 of the Administrative Code (Record, pages 121 to 127). An appeal was taken by petitioner to the Supreme Court of the Philippines (Record, page 128), which affirmed the judgment. The Supreme Court concluded that the statute validly imposed a succession tax on the transfer upon decedent's death of the shares in question (Record, pages 128 to 138). Petitioners moved for reconsideration of this judgment, which motion was denied (Record, page 146).

II.

STATUTORY PROVISIONS SUSTAINING JURISDICTION.

Jurisdiction to sustain this petition is found in Act of Congress of February 13, 1925, Chapter 229, section 7, 43 Statutes, 940; U. S. C. A., Title 28, section 349.

III.

STATUTE INVOLVED.

The statute of the Philippines involved herein and in the proceedings before the Courts of the Islands is section 1536 of the Administrative Code (Act No. 2711, Philippine Legislature, 1917) reading in its only relevant part as follows:

> "Every transmission by virtue of inheritance, devise, bequest, gift *mortis causa* or advance in anticipation of inheritance, devise, or bequest of real property located in the Philippine Islands and real rights in such property; of any franchise which must be exercised in the Philippine Islands; of any shares, obligations, or bonds issued by any corporation or *sociedad anónima* organized or constituted in the Philippine Islands in accordance with its laws; of any shares or rights in any partnership, business or industry established in the Philippine Islands, or of any personal property located in the Philippine Islands shall be subject to the following tax * * *."

In connection with the question of construction of the statute hereinbefore referred to, there is likewise involved an amendment to this section, effective October 29, 1936: Commonwealth Act 106, which amended the first few words of section 1536 to read as follows:

> "Every transmission by a decedent, *whether a resident or nonresident,* by virtue of inheritance, devise, bequest, * * *."

The italicized words constitute the statutory amendment herein referred to.

The validity of section 1536 is to be measured by the provisions of the Fourteenth Amendment of the Federal Constitution, as incorporated in the organic laws of the Philippines in

> Philippine Autonomy Act of Congress, August 29, 1916, C. 416, § 3 (39 Stat. 546; U. S. C. A. Title 48, § 1008),

providing:

> "No law shall be enacted in the Philippine Islands which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws."

IV.

JUDGMENT OF THE SUPREME COURT OF THE PHILIPPINES.

The judgment of the Supreme Court of the Philippines with respect to which this petition is brought was docketed by that Court on June 15, 1939, under G. R. No. 46720, and rendered on June 28, 1940 (Record, page 128); motion for reconsideration was made on July 12, 1940 (Record, page 138), and denied on August 6, 1940 (Record, page 146); the judgment was entered and became final and executory on August 10, 1940 (Record, page 153).

V.

QUESTIONS PRESENTED.

The questions presented by this petition are:

1. Whether the Supreme Court of the Philippines unreasonably and improperly construed section 1536 of the Administrative Code of the Philippines to include as subject to the succession tax imposed by that section the transfer upon death of the shares of an anonymous partnership of the Philippines owned by a decedent who was a resident of and domiciled in the State of California.

2. Whether section 1536 of the Administrative Code of the Philippine Islands, as construed to apply to the transfer upon death of shares in a Philippine anonymous partnership of a decedent who was a resident of and domiciled in the State of California, violates the constitutional safeguards of the Fourteenth Amendment of the Federal Constitution, incorporated in the organic law of the Philippines.

VI.

REASONS RELIED ON FOR ALLOWANCE OF WRIT.

1. In construing the succession tax imposed by section 1536 of the Administrative Code as applicable to the transfer of shares in a Philippine anonymous partnership passing by the will of a decedent who was at the time of her death a resident of and domiciled in the State of California, and in upholding the validity

of the statute as so construed by it, the Supreme Court of the Philippines has decided a federal question of substance, which heretofore has not been determined by this Court, and has decided it in a way which is not in accord with the decisions of this Court most closely analogous.

2. In its construction of the statute, the Court unnecessarily put in issue the question of its validity. The determination that the statute applied to the transfer by will of shares of a Philippine anonymous partnership belonging to a decedent who was domiciled and residing in a State of the United States went beyond the words or necessary intendment of the statute and did violence to accepted doctrines of statutory construction, such as:

(a) That a statute be construed, if the language thereof reasonably permits, so as to avoid a possible violation of constitutional provisions;

(b) That a taxing statute be not assumed to operate extraterritorially; and

(c) That a statute prior to its amendment be not deemed to include the substance of the change made by the amendment.

The construction was so unreasonable and improper as to command the consideration of this Court, particularly as it gives rise to the question of the validity of the statute itself. Had the Philippine Court not construed the statute as applying to the transfer of shares owned by a decedent residing and domiciled in

the State of California, there would have been no need to determine the issue as to whether the statute as so construed violated due process.

3. The Court's construction does present the larger issue, namely, as to the power of the Philippine Islands to impose a tax on the transfer by death of shares in an anonymous partnership of the Philippines owned by a decedent who was a resident of and domiciled in a State of the Union at and for many years prior to the time of death. It is evident that a final determination should be had as to whether this statute, as construed by the Philippine Court, is in violation of the principles of the Fourteenth Amendment of the Federal Constitution, embraced in those statutes of the United States which constitute the organic law of the Philippines. There is thus squarely presented a case involving the Constitution and statutes of the United States within the meaning of section 7 of Chapter 229 of the Act of February 13, 1925, permitting these proceedings. This particular issue heretofore has not been passed upon by this Court. Decisions bearing the closest analogy are those denying the right of the State of incorporation to impose a similar succession tax upon the shares of such corporation passing by virtue of the death of a stockholder who resided and was domiciled in another State. The judgment of the Philippine Court is in direct conflict with the decision most nearly related:

First National Bank of Boston v. Maine, 284 U. S. 312, 76 L. ed. 313,

and is not determined, as the Courts of the Islands assumed, by either:

Burnet v. Brooks, 288 U. S. 378, 77 L. ed. 844,

or

Curry v. McCanless, 307 U. S. 357, 83 L. ed. 1339.

4. A further seemingly compelling reason for the review by this Court of the decision of the Supreme Court of the Philippines is the fact that this case unequivocably involves a question of outstanding general importance, namely, as to the power of the Philippine Islands, and the extent of such power, to tax debts and intangibles, having their source in the Islands, but owned by a person not residing or domiciled there, and who is in fact a citizen of the United States residing and domiciled in a State of the United States.

Wherefore, your petitioner prays that a writ of certiorari issue under the seal of this Court, directed to the Supreme Court of the Philippine Islands, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of said Supreme Court of the Philippines had in the case numbered and entitled on its docket, "G. R. No. 46,720, Wells Fargo Bank & Union Trust Co., Petitioner-Appellant, v. The Collector of Internal Revenue, Respondent-Appellee," to the end that this cause may be reviewed and determined by this Court, as provided for by the statutes of the United States, and that the judgment herein of the said Supreme

Court of the Philippines be reversed by this Court, and for such other and further relief as to this Court may seem proper.

Dated, San Francisco, California,
January 30, 1941.

SIDNEY M. EHRMAN,
LLOYD W. DINKELSPIEL,
Counsel for Petitioner.

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Respondent and Appellee below.

BRIEF IN SUPPORT OF PETITION.

I.

OPINIONS OF THE COURTS BELOW.

The opinion of the Supreme Court of the Philippines appears in the records of that Court under General Registry No. 46720 (Record, pages 128 to 138). The official report has not yet been printed.

The opinion of the Court of First Instance of Manila is set forth in the Record at pages 121 to 127.

II.

JURISDICTION.

1. The date of the decision to be reviewed is June 28, 1939 (Record, pages 128 to 138); a motion for reconsideration was made on July 12, 1940 (Record, page 138); the motion was denied on August 6, 1940 (Record, page 146); judgment was entered and became final on August 10, 1940 (Record, page 153).

2. The statutory provision which sustains the jurisdiction of this Court is section 7 of Chapter 229, Act of February 13, 1925 (43 Statutes, 940; U. S. C. A., Title 28, section 349). The petition for writ of certiorari is made in conformance with Rule 42 of the Rules of this Court. It is within the six months time limit permitted by section 7 of Chapter 229, Act of February 13, 1925. According to the decisions of this Court, the time for the filing of this petition commenced with the date of entry of judgment denying rehearing, August 10, 1940 (Record, page 153).

> *National Labor Relations Board v. Mackay Radio & Telegraph Co.,* 304 U. S. 333, 82 L. ed. 1381, at 1389.

3. The case is brought to this Court because it involves the Constitution and a statute of the United States, namely, the Philippine Autonomy Act of Congress of 1916, Chapter 416, section 3 (39 Statutes, 545; U. S. C. A. Title 48, section 1008), which adopts the principles of the Fourteenth Amendment of the Federal Constitution. The involvement of the Constitution and statute arises (a) from the construction by the Philippine Supreme Court that section 1536 of the

Administrative Code imposes a succession tax on the transfer upon death of shares in an anonymous partnership of the Philippines owned by a nonresident, nondomiciled decedent; and (b) the determination that such statute is valid and does not violate the aforementioned constitutional and statutory provisions. The Supreme Court of the Philippines has, therefore, determined a federal question of substance. Whether a statute as construed and enforced by the Courts of the Islands violates the due process provisions of the Federal Constitution incorporated in the organic laws of the Philippines is a question which has commanded the attention of this Court on numerous occasions.

III.

STATEMENT OF THE CASE.

A statement of the case has already been set forth in the preceding Petition for Certiorari, paragraph I thereof, pages 1 to 3, and such statement is hereby adopted and made a part of this brief.

IV.

SPECIFICATIONS OF ERROR.

1. The Supreme Court of the Philippines erred in construing section 1536 of the Administrative Code of the Philippines to apply to the transfer upon death of shares of an anonymous partnership of the Philippines owned by the decedent, Birdie Lillian Eye, who

was a resident of and domiciled in the State of California.

2. The Supreme Court of the Philippines erred in holding that section 1536 of the Administrative Code of the Philippines, as construed to apply to the transfer upon death of shares in a Philippine anonymous partnership of the decedent, Birdie Lillian Eye, a resident of and domiciled in the State of California, was valid and did not violate the provisions of the Fourteenth Amendment adopted by the organic laws of the Philippine Islands.

3. The Supreme Court of the Philippines erred in holding that the shares of stock in the anonymous partnership which belonged to decedent at the time of her death had an actual situs in the Philippines sufficient to sustain the jurisdiction of the Philippines to levy a tax upon the transfer of said shares by her will.

V.

SUMMARY OF THE ARGUMENT.

It is the position of the petitioner herein:

(1) That the Supreme Court of the Philippines unreasonably and improperly construed section 1536 of the Administrative Code of the Philippines as imposing a tax upon the transfer of shares in a Philippine anonymous partnership passing by the will of the decedent, who was neither a resident of nor domiciled in the Philippines, and whose will and estate were probated in the State of California. In reaching this

conclusion, the Court violated three generally accepted rules of construction:

(a) That when a statute admits of two interpretations, one of which presents a grave question of constitutionality and the other brings it within constitutional limits or avoids the question thereof, the Court should adopt the latter interpretation;

(b) That a taxing statute be not assumed to operate extraterritorially; and

(c) That if a statute be subsequently amended, the presumption is that the amendment was intended to change the statute and that the content of the amendment was not contained in the original law.

(2) That section 1536 of the Administrative Code violates the principles of the Fourteenth Amendment, adopted as aforementioned as the law of the Philippines, in its attempt to tax the transfer upon death of shares in a Philippine anonymous partnership of a decedent who resided and was domiciled in a State of the United States.

(a) This question heretofore has not been precisely determined, as the cases relating to this general subject have involved either the taxing authority of the several states,

First National Bank of Boston v. Maine, 284 U. S. 312, 76 L. ed. 313;

Farmers Loan & Trust Co. v. Minnesota, 280 U. S. 204, 74 L. ed. 371;

Baldwin v. Missouri, 281 U. S. 586, 74 L. ed. 1056;

Beidler v. South Carolina Tax Commission, 282 U. S. 1, 75 L. ed. 131;

or the taxing power of the federal government,

Burnet v. Brooks, 288 U. S. 378, 77 L. ed. 544.

(b) The cases relating to the power to tax as between the several states should, by analogy and authority, control as between the Philippine Islands and a State of the United States.

Compania General De Tabacos De Filipinas v. Collector of Internal Revenue, 275 U. S. 87, 72 L. ed. 177.

(3) That the facts of the instant matter do not warrant the application of a different rule than that set forth in *First National Bank of Boston v. Maine.* If that case is still law it should control as its facts are practically identical to those herein. The presence of the stock certificates in the Philippine Islands is not sufficient to create a legal basis for taxation. This case does not, therefore, fall within the doctrine of *Curry v. McCanless,* 307 U. S. 357, 83 L. ed. 1339.

VI.

ARGUMENT.

1. **THE SUPREME COURT OF THE PHILIPPINES ERRED IN CONSTRUING SECTION 1536 OF THE ADMINISTRATIVE CODE AS IMPOSING A TAX UPON THE TRANSFER OF SHARES IN A PHILIPPINE ANONYMOUS PARTNERSHIP PASSING BY THE WILL OF A DECEDENT WHO WAS A RESIDENT OF AND DOMICILED IN A STATE OF THE UNION.**

The language of the statute does not compel this construction and, on the principles hereinafter stated, the Court's construction was unreasonable and improper. The pertinent provisions of the section read as follows:

> "Every transmission by virtue of inheritance, devise, bequest, gift *mortis causa* or advance in anticipation of inheritance, devise, or bequest of real property located in the Philippine Islands and real rights in such property; of any franchise which might be exercised in the Philippine Islands; of any shares, obligations, or bonds issued by any corporation or *sociedad anónima* organized or constituted in the Philippine Islands in accordance with its law; of any shares or rights in any partnership, business or industry established in the Philippine Islands, or of any personal property located in the Philippine Islands shall be subject to the following tax * * *."

It is true that the section refers to "every transmission" but does not elaborate upon this language or specifically state that it relates to non-residents as well as residents. It is to be noted that it applies not alone to shares of a corporation or sociedad anónima (throughout these entire proceedings the shares in an anony-

mous partnership of the Philippines have been assumed, in accordance with the laws of the Philippines, as having the same general status as shares of a corporation), but likewise to "obligations, or bonds" issued by a corporation or partnership. Although there are no such obligations or bonds involved in the instant case, the Court's construction raises the question of validity, not only under the doctrine of *First National Bank of Boston v. Maine* relating to corporate stock, but likewise under *Baldwin v. Missouri* involving money in bank and obligations on notes, under *Beidler v. South Carolina Tax Commission* which concerned bonds of a corporation, and under *Farmers Loan & Trust Co. v. Minnesota* relating to state bonds. The extension of the statute to the shares owned by a nonresident was unnecessary and violated certain generally accepted rules of construction:

(a) That when a statute admits of two interpretations, one of which presents a grave question of constitutionality and the other brings it within constitutional limits or avoids the question thereof, the Court should adopt the latter interpretation.

This Court has said that this rule is elementary. And, of course, it does not mean that the Court's first duty is to decide that the statute is unconstitutional and then to proceed with its construction, but that it is the Court's duty, where possible, to avoid "grave and doubtful constitutional questions".

United States ex rel. The Attorney General v. Delaware and Hudson Co., 213 U. S. 366, at 408, 53 L. ed. 836;

Shwab v. Doyle, 258 U. S. 529, 66 L. ed. 747.

(b) That a taxing statute be not assumed to operate extraterritorially.

Pittsburg, Cincinnati, Chicago & St. Louis Railway Co. v. Backus, 154 U. S. 421, at 428, 38 L. ed. 1031.

As stated by Professor Cooley, in his textbooks on Taxation, 4th Edition, section 100:

> "there is no presumption that a state intends extraterritorial taxation, and, before a tax statute will be condemned as not being limited in its operation to persons or property within the state, it must clearly appear from the language used that the statute was intended to reach sources of revenue which are beyond the state's territorial jurisdiction."

The principle that the subject to be taxed must be within the jurisdiction of the state or territory applies as well in the case of a transfer or succession tax as in that of a property tax.

Rhode Island Hospital Trust Co., Executor, v. Doughton, 270 U. S. 69, 70 L. ed. 475.

(c) That if a statute be subsequently amended, the presumption is that the amendment was intended to change the statute and that the content of the amendment was not contained in the original law.

Admittedly this rule of construction may be affected by the circumstances attendant upon the adoption of the statute. The Courts have, however, repeatedly held that an amendment to the prior act demonstrates the intent to change the pre-existing law;

> "and the presumption is that it (the amendment) intended to change the statute in all particulars

touching which we find a material change in the language of the act." (*Irwin, Collector of Internal Revenue, v. Gavit,* 295 Fed. 84, at 88 [CCA, 2nd]; reversed on other grounds 268 U. S. 160, 69 L. ed. 897.)

U. S. v. Bashaw, 50 Fed. 752 (CCA, 8th) (likewise reversed on other grounds 152 U. S. 436, 38 L. ed. 505);

MacKay v. Commissioner, 94 Fed. (2d) 558, at 561 (CCA, 2nd);

U. S. v. Board of Commissioners, 26 Fed. Supp. 270 at 274 (D. C. N. D. Okla.);

Holmes, Federal Taxes, 6th Edition, page 1589.

The facts of the instant matter clearly bring the case within this rule of construction.

By Commonwealth Act No. 106, adopted several years subsequent to the death of the decedent herein on September 16, 1932 (the Act became effective October 26, 1936), the Philippine Legislature amended section 1536 of the Administrative Code by inserting "whether a resident or nonresident" after the introductory words "Every transmission by a decedent" (Petition, page 5). The insertion of these words, however, evidences the fact that the statute was previously ambiguous, at the very least. If the statute had the broad effect prior to its amendment which the Philippine Supreme Court in this case ascribed to it, the amending words were unnecessary.

Although it is appreciated that this Court is disposed to accept the construction placed by the highest Court of a territory or possession upon a local statute,

it is likewise true that such "disposition may not be yielded to, where the lower court has clearly erred" (*Philippine Sugar etc. Co. v. Philippine Islands,* 247 U. S. 385, 62 L. ed. 1177). See also,

Yu Cong Eng v. Trinidad, 271 U. S. 500, 70 L. ed. 1059.

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2. **THE SUPREME COURT OF THE PHILIPPINES ERRED IN HOLDING THAT THE PHILIPPINE ISLANDS MAY VALIDLY TAX THE TRANSFER UPON DEATH OF SHARES IN AN ANONYMOUS PARTNERSHIP OF THE PHILIPPINES, OWNED BY AND PART OF THE ESTATE OF A DECEDENT RESIDING AND DOMICILED IN A STATE OF THE UNITED STATES.**

(a) The precise question as to the power of the Philippines to tax shares of stock in a Philippine anonymous partnership or corporation, passing by the will of a person domiciled in a State of the United States, has not heretofore been finally determined. We are aware of no case decided by this Court which has determined the question of the right of the Philippine Islands to impose a tax to the extent claimed herein. The case of *First National Bank of Boston v. Maine,* which is closest to the instant matter upon its facts, involved the attempt by the State of Maine to tax the transmission by death of shares of stock in a Maine corporation, passing under the will of a decedent who, at the time of death, was a resident of the State of Massachusetts. In denying to the State of Maine, the right to impose such inheritance or succession tax, the court considered the effect of the Fourteenth Amendment upon the exercise

of the taxing power as between two states. As herein elsewhere noted, it is, of course, contended by petitioner that the same rule should apply, under similar circumstances, as between the Philippine Islands and a State of the United States.

The Courts of the Philippines in the instant matter have placed great emphasis upon *Burnet v. Brooks,* but this case does not determine the issue here involved as it relates to the power of the federal government to impose an estate tax upon the intangible property of a nonresident decedent which was physically present in the United States. This Court in that case first construed the legislative intention of Congress, in the light of the established taxing power of the federal government, as imposing a tax upon such intangibles as it could reach, irrespective of the arbitrary principle of *mobilia sequuntur personam.* The Court then considered the question of power to levy the tax, and concluded that:

> "As a nation, with all the attributes of sovereignty, the United States is vested with all the powers of government necessary to maintain an effective control of international relations." (77 L. ed. 852.)

The existence of jurisdiction was held a sufficient answer to any alleged constitutional restriction. The Court recognized the doctrine of *First National Bank v. Maine* and other cases, but held that the principle thereof "progressively applied in limiting the jurisdiction of the States to tax, does not restrict the taxing power of the Federal Government." (77 L. ed. 855.)

(b) The cases relating to the taxing power as between the several States should, by analogy and authority, control the exercise of such power as between the Philippine Islands and a State of the United States. To assert that the doctrine of *Burnet v. Brooks* applies to the instant matter, rather than the case of *First National Bank of Boston v. Maine,* is to ascribe to the Philippine Islands a greater sovereignty or jurisdiction than to the several States. Even a most casual reference to the organic powers of the Philippines clearly establishes that this is not a correct assertion. The powers of the Philippine government stem from enactments of Congress granting such powers.

Philippine Autonomy Act of Congress, August 29, 1916, Chapter 416; 39 Stat. 546.

The more recent legislation, providing for and relating to ultimate independence of the Philippines, does not, particularly as applied to the instant matter, basically change this situation.

Act of Congress, January 17, 1933, Chapter 11; 47 Stat. 765;

Act of Congress, March 24, 1934, Chapter 84; 48 Stat. 456.

The constitutional limitations of the States upon which the decisions of *First National Bank of Boston v. Maine* and others in accord heretofore cited are based are part of the organic law of the Philippines with equal force and effect, being statutes of the United States, as if the Constitution itself directly applied.

The Philippine Bill of Rights (Act of Congress, August 29, 1916, Chapter 416, section 3; 39 Stat. 545, U.S.C.A. Title 48, section 1008 [Petition, page 5]) incorporates in its first sentence that provision of the Fourteenth Amendment which is the basis of *First National Bank of Boston v. Maine.* This Court has on numerous occasions considered and upheld the due process protection of the Federal Constitution as adopted in the laws of the Philippines.

Ong Chang Wing v. United States, 218 U. S. 272, 54 L. ed. 1040;

Yu Cong Eng v. Trinidad, 271 U. S. 500, 70 L. ed. 1059;

Compania General De Tabacos De Filipinas v. Collector of Internal Revenue, 275 U. S. 87, 72 L. ed. 177.

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3. THE SUPREME COURT OF THE PHILIPPINES ERRED IN HOLDING THAT THE SHARES IN AN ANONYMOUS PARTNERSHIP WHICH BELONGED TO DECEDENT AT THE TIME OF HER DEATH HAD A SITUS IN THE PHILIPPINES SUFFICIENT TO SUSTAIN THE JURISDICTION OF THE PHILIPPINES TO IMPOSE A TAX UPON THE TRANSFER OF SAID SHARES UNDER DECEDENT'S WILL.

In reaching its determination that section 1536 of the Administrative Code was not unconstitutional in its application to the estate of the decedent herein, the Supreme Court of the Philippines laid emphasis upon the fact that decedent's certificates of stock were in the possession, at the time of her death, of the secretary of the corporation, to whom they had been de-

livered and endorsed in blank (Record, page 137). There is, of course, no contention that decedent had divested herself of any ownership or rights of ownership. In fact, the record unequivocally establishes the contrary (Record, page 32). The statement of the Philippine Court that the possessor of the certificates had the right to vote them, to collect the dividends, and even to dispose of them (Record, page 137), is entirely unsupported by anything in the record. The Court admits that such action would be "without prejudice to her liability to the owner for violation of instructions" (Record, page 137).

It is apparently upon the basis of these facts that the Court sought to bring this case within the decision of *Curry v. McCanless.* But the instant situation is not like that which caused this Court to uphold the tax imposed by the State of Alabama; the decedent had created a trust in that State, had transferred intangibles to a trustee to which he had given full power of management and control, had reserved to himself a general power of appointment over the trust property, and had otherwise acted "so as to avail himself of the benefit of the laws of" that State (83 L. ed. 1348).

There is here no necessity of determining the extent of the taxing power of the Philippine Islands as based upon a "business situs" of the shares. Mere presence of the certificates in custody in the Philippines does not establish such situs.

Ewa Plantation Co. v. Wilder, 289 Fed. 664, at 670 (CCA, 9th).

But the Supreme Court of the Philippines does not even require a business situs to sustain the imposition of the tax, stating:

> "In the instant case, the actual situs of the shares of stock is in the Philippines, the corporation being domiciled therein." (Record, page 137.)

The quoted statement goes beyond anything heretofore decided on this subject by this Court.

If the judgment of the Supreme Court of the Philippines is upheld, it must necessarily mean this Court concludes that *Curry v. McCanless* has overruled *First National Bank of Boston v. Maine*. *Curry v. McCanless* itself does not so indicate and, in fact, cites without disapproval the earlier decision.

The facts of this case are practically identical to those of *First National Bank of Boston v. Maine*. If for no other reason therefore, and petitioner believes that other adequate reasons have been advanced herein, than to determine whether that case on its facts is still law, this petition should be granted.

Dated, San Francisco, California,
January 30, 1941.

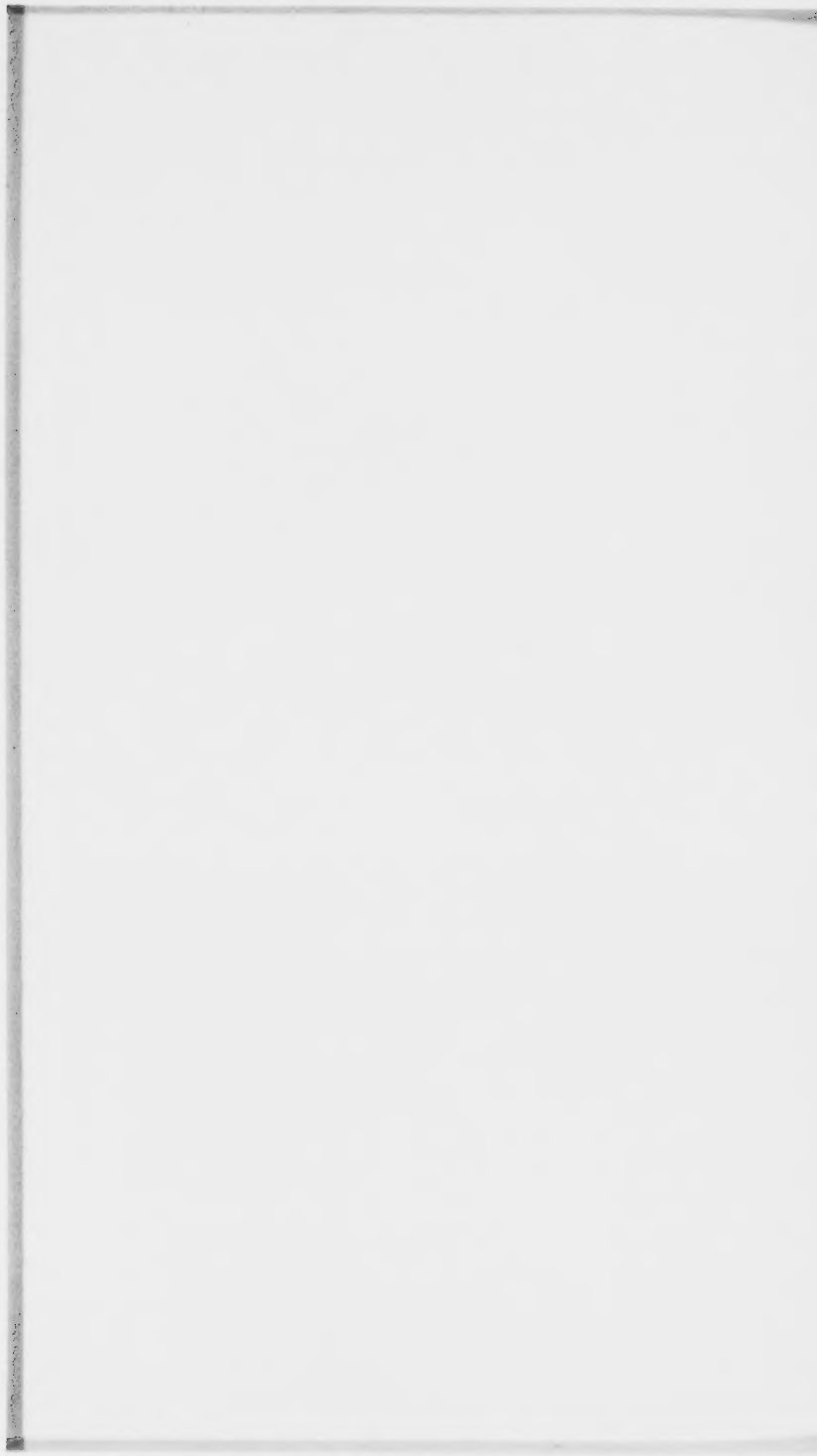
Respectfully submitted,
SIDNEY M. EHRMAN,
LLOYD W. DINKELSPIEL,
Counsel for Petitioner.

Due service and receipt of a copy of the within is hereby admitted

*this*_____*day of*_____*1941.*

_____

Solicitor General Commonwealth of the Philippines,
Counsel for Respondent.



FILED
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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

No. 749

WELLS FARGO BANK & TRUST COMPANY,
Petitioner,

v.

COLLECTOR OF INTERNAL REVENUE,
Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION

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IN THE

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OCTOBER TERM, 1940

No. 749

WELLS FARGO BANK & TRUST COMPANY,
Petitioner,

v.

COLLECTOR OF INTERNAL REVENUE,
Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION

Opinions Below

The decision of the Court of First Instance of Manila appears in full in the transcript of record (R. 121-127). The decision of the Supreme Court of the Commonwealth of the Philippines, affirming the judgment of the trial court, also appears in full in the transcript of record (R. 128-138). Motion for reconsideration (R. 138-139) submitted by counsel for petitioner (plaintiff below) was denied by the Supreme Court of the Philippines (R. 146).

Jurisdiction

Final judgment was entered by the Supreme Court of the Philippines on August 6, 1940 (R. 146). Petition for writ of certiorari was filed February 5, 1941, together with a supporting brief and transcript of record. Petitioner seeks to invoke the jurisdiction of this Court under section 7 of the act of February 13, 1925 (43 Stat. 936, 940, 28 U. S. C. sec. 349).

Statute Involved

The statute involved herein is section 1536 of the Philippine Administrative Code (act No. 2711 of 1917), the pertinent provisions of which are as follows:

> Every transmission by virtue of inheritance, devise, bequest, gift *mortis causa* or advance in anticipation of inheritance, devise or bequest of real property located in the Philippine Islands and real rights in such property; of any franchise which must be exercised in the Philippine Islands; of any shares, obligations, or bonds issued by any corporation or *sociedad anónima* organized or constituted in the Philippine Islands in accordance with its laws; of any shares or rights in any partnership, business, or industry established in the Philippine Islands, or of any personal property located in the Philippine Islands shall be subject to the following tax: * * *.

Questions Involved

1. Whether the petitioner presents a sufficient basis for certiorari in contending that the Supreme Court of the Philippines erred in holding that section 1536, *supra,* imposed a succession tax on the transfer of a nonresident decedent's shares in a Philippine anonymous partnership where such shares had always been located in the Philippines and were, at the time of transfer, in the possession of a Philippine resident, to whom they had been delivered, indorsed in blank.

2. Whether the petitioner presents a sufficient basis for certiorari in contending that section 1536, so construed, deprives petitioner of property without due process of law.

Statement

Petitioner, as trustee of the trust created by the last will and testament of Birdie Lillian Eye, deceased, is seeking to review a decision of the Supreme Court of the Philippines affirming a declaratory judgment rendered by Court of

First Instance of Manila to the effect that the transfer, by virtue of the said will, of shares of stock of Benguet Consolidated Mining Company, a Philippine anonymous partnership (*sociedad anónima*), is properly subject to the Philippine succession tax imposed by section 1536 of the Philippine Administrative Code. The certificates for the shares in question have never been outside of the Philippines and, at the time of decedent's death, were in the possession of the Secretary of the Benguet Consolidated Mining Company, to whom they had been delivered, indorsed in blank.

Argument

1. The Supreme Court of the Philippines, following its construction of the same statute in *Knowles* v. *Yatco*, G. R. No. 42,967 (R. 130), held section 1536 applicable to the transfer here involved. The section imposes a succession tax on

> Every transmission by virtue of inheritance, devise, bequest, * * * of any shares * * * issued by any * * * *sociedad anónima* organized or constituted in the Philippine Islands in accordance with its laws; of any shares or rights in any partnership * * * established in the Philippine Islands, or of any personal property located in the Philippine Islands * * *.

The Benguet Consolidated Mining Company admittedly is a "*sociedad anónima* organized or constituted in the Philippine Islands in accordance with its laws"; and a "transmission" of its shares admittedly occurred "by virtue of an inheritance, devise, bequest." Since section 1536 applies expressly to "Every" such "transmission," the courts below obviously did not misconstrue its provisions in holding it applicable to the transmission involved in the case at bar.

Petitioner concedes that the language of the statute is broad enough to be applicable but points to Commonwealth Act No. 106 of 1936 in support of the opposite conclusion. This statute revised the rates imposed by section 1536 and, among other changes made for the purpose of clarification,

amended the first sentence of the section by inserting in the original language the words indicated by italics:

> Every transmission by a decedent, *whether a resident or nonresident*, by virtue of inheritance, devise, bequest, * * *.

Petitioner contends, in effect, that the insertion of the words "whether a resident or nonresident" should be presumed to have filled a need felt by the Philippine Legislature to *change* the *scope* of the original statute and hence to indicate that its application, before the amendment, did not extend to transmissions of shares by nonresident decedents.

This argument is without merit. The presumption invoked by the petitioner is, at best, no more than a mere rebuttable inference untenable in the face of a showing that the Legislature actually had some other reason for its action. Such a showing can be and in fact was made in this case on the appeal before the Supreme Court of the Philippines when petitioner for the first time pointed to the amendment of section 1536 in support of this contention as to its interpretation. Although respondent objected to the injection of the issue at a stage when it was too late to incorporate the pertinent evidence as part of the transcript of record, respondent, nevertheless answering it on the merits, attached as appendices to his brief below certified copies of documents, judicially noticeable, which show that *the Legislature intended to clarify, not to extend, section 1536.* (Report of the Secretary of Finance to the President of the Philippines dated August 6, 1936,[1] on the bill which became Act No. 106; Opinion of the Attorney General of the Philippines, dated November 19, 1932, to the Collector of Internal Revenue.[1]) The object of this particular amendment was to give legislative confirmation to the prior administrative construction of section 1536. *Knowles* v. *Yatco,* G. R. No. 42,967; see also *Gibbs* v. *Government of the Philippines,* G. R. No. 35,694.

[1] See Appendix, *infra.*

The petitioner's only other arguments are based upon the assumption that to construe section 1536 so as to impose a succession tax on the particular transfer involved in the case at bar, would raise a serious doubt as to its constitutionality. This argument is addressed not to the construction of the section but to its constitutionality. And it will be shown in the next point that the statute, as construed and applied herein by the local courts, is not unconstitutional.

All of the arguments made here by petitioner concerning the proper construction of section 1536 were pressed upon the Supreme Court of the Philippines and rejected by that Court. This Court has frequently reiterated its traditional reluctance to disturb the construction placed upon a local statute by the highest court of a Territory and has refused to accept such construction only where there is manifest error. (*Work* v. *United Globe Mines*, 231 U. S. 595 (1914); *Gauzon* v. *Compañia General de Tabacos*, 245 U. S. 86 (1917); *Bonet* v. *Yabucoa Sugar Co.*, 306 U. S. 505 (1939); *Philippine Sugar Co.* v. *Philippine Islands*, 247 U. S. 385 (1918). Obviously, such a case is not presented here.

2. Petitioner challenges the decisions below as contrary to the principles laid down by this Court, particularly in *First National Bank of Boston* v. *Maine*, 284 U. S. 312 (1932),[2] in which the validity of a Maine statute, somewhat

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[2] The other cases on which petitioner relies are:

Farmers Loan & Trust Co. v. *Minnesota*, 280 U. S. 204 (1930);
Baldwin v. *Missouri*, 281 U. S. 586 (1930);
Beidler v. *South Carolina Tax Commission*, 282 U. S. 1 (1930).

All of these cases differ in essential particulars from the instant case. See dissenting opinion, 284 U. S. 312, at page 331. Moreover, they must be considered as modified by the subsequent cases of *Burnet* v. *Brooks*, 288 U. S. 378 (1933); *Curry* v. *McCanless*, 307 U. S. 357 (1939); *Graves* v. *Elliott*, 307 U. S. 383 (1939).

like the statute here involved, was considered. Even if the authority of that case were unimpaired, it would have no application here since it involved essentially different facts. There the Court, over the vigorous dissent of Mr. Justice Stone, in which Mr. Justice Holmes and Mr. Justice Brandeis joined, held that the State of Maine could not levy a succession tax on the transfer upon death of shares of stock in a Maine corporation held by a nonresident decedent where such shares had not otherwise acquired a taxable situs in that State. But here the Supreme Court of the Philippines has expressly rested its decision upon the finding that the decedent, by indorsing the shares in blank and delivering them to a Philippine resident, had effectively localized the shares in the Philippines so that they had acquired a taxable situs there.[3] The court below stated also, in *dicta*, that it believed that in light of the holding of this Court in *Burnet* v. *Brooks*, 288 U. S. 378 (1933), organization of the partnership under Philippine laws, without more, created a sufficient relationship between the Philippine Government and the interest represented by the shares to provide a valid jurisdictional basis for taxation; but it specifically recognized that the instant case did not present that question for decision.

Accordingly, the court below based its judgment on *Curry* v. *McCanless*, 307 U. S. 357 (1939), the decision of this Court most closely analogous to the instant case. In that case the settlor, domiciled in Tennessee, transferred stocks and

---

[3] In the *First National Bank of Boston* case, the Court specifically reserved for consideration when it should arise the question presented in this case, stating that:

> We do not overlook the possibility that shares of stock, as well as other intangibles, may be so used in a State other than that of the owner's domicile as to give them a *situs* analogous to the actual *situs* of tangible personal property * * *. That question heretofore has been reserved, and it still is reserved to be disposed of when, if ever, it properly shall be presented for our consideration. [284 U. S. 312, 331.]

bonds to an Alabama trustee under an indenture which reserved the income to the settlor for life. The power to dispose of the trust corpus by will was also reserved. In holding that both Alabama and Tennessee could exact a succession tax, the Supreme Court stated that:

> * * * when the taxpayer extends his activities with respect to his intangibles, so as to avail himself of the protection and benefit of the laws of another State, in such a way as to bring his person or property within the reach of the tax gatherer there, the reason for a single place of taxation no longer obtains, * * *. [307 U. S. 357, 367.][4]

The case at bar clearly falls within the doctrine of the *McCanless* case. Here the taxpayer had extended her activities with respect to her intangibles to the Philippines and had availed herself of the protection and benefits of the laws of the Commonwealth. She had, moreover, by indorsing the certificates in blank and delivering them to a Philippine resident, brought the property itself within the reach of the Philippine tax gatherer.[5] The *McCanless* case and the instant

[4] The dissenting justices in *Curry* v. *McCanless* did not question the validity of the tax by the State in which the physical evidences of the intangibles were held in trust. They questioned only the validity of a tax by the State of domicile, stating that:

> * * * The general rule of *mobilia sequuntur personam* must yield to the established fact of legal ownership, actual presence and control in a State other than that of the domicile of the owner. [307 U. S. 357, 381.]

[5] The court below held that the indorsement in blank and delivery of the shares to Syrena McKee, secretary of the company, gave to her

> * * * the right to vote the certificates at the general meetings of the stockholders, to collect dividends thereon, and dispose of the shares in the manner she may deem fit, without prejudice to her liability to the owner for violation of instructions. For all practical purposes, then, Syrena McKee had the legal title to the certificates of stock held in trust for the true owner, thereof. * * *

The petitioner challenges the validity of this holding on the ground that it is "unsupported by anything in the record" (Brief, p. 25). Even if petitioner's contention on this point

case are, therefore, in all essential respects identical. This case presents no problem not considered by this Court in the *McCanless* case and no solution not prescribed by this Court in that case.

Conclusion

The judgment of the Supreme Court of the Philippines is correct and in accord with the decisions of this Court. The petition should be denied.

Respectfully submitted,

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Solicitor for the
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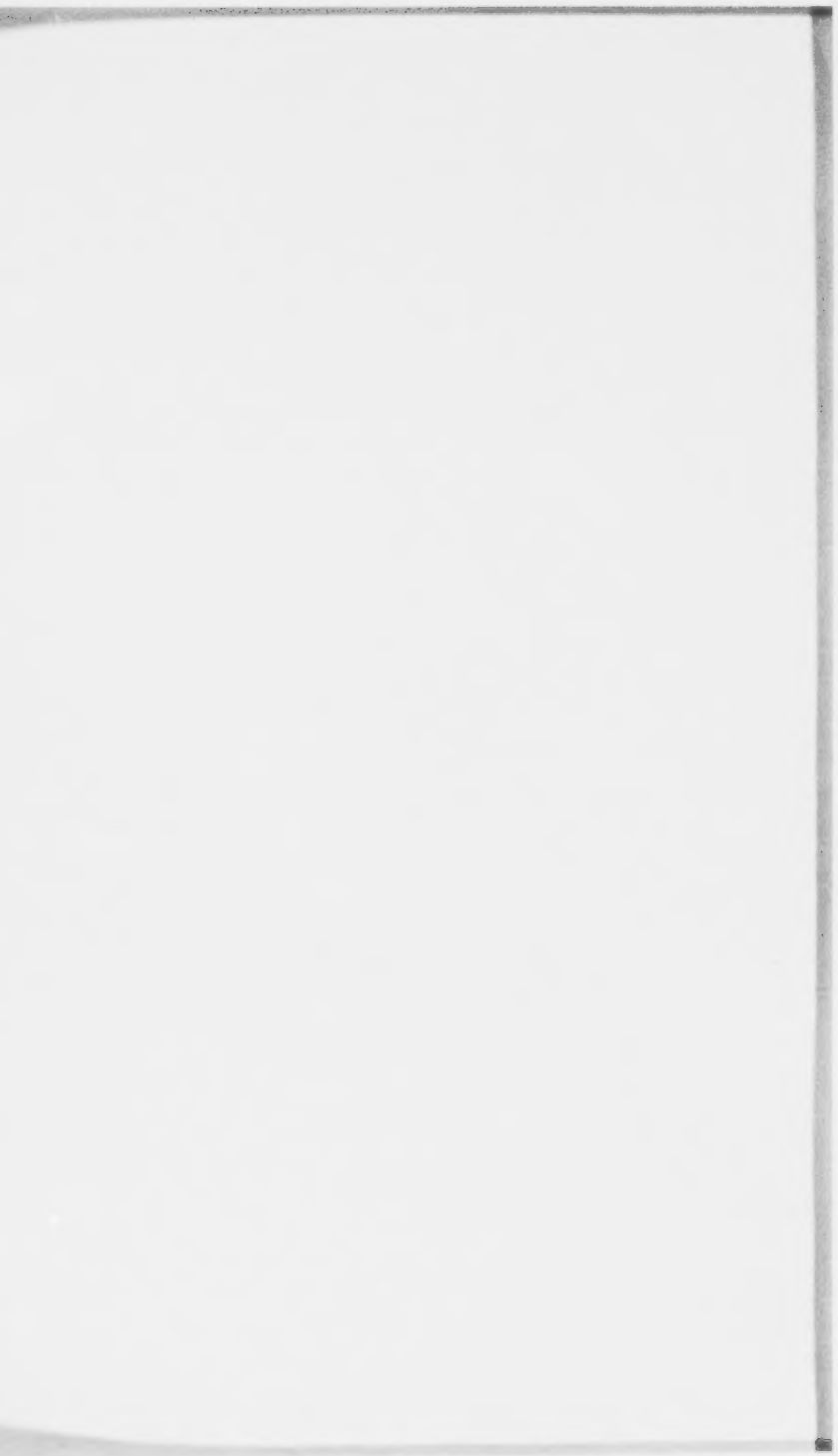
Attorney for Respondent.

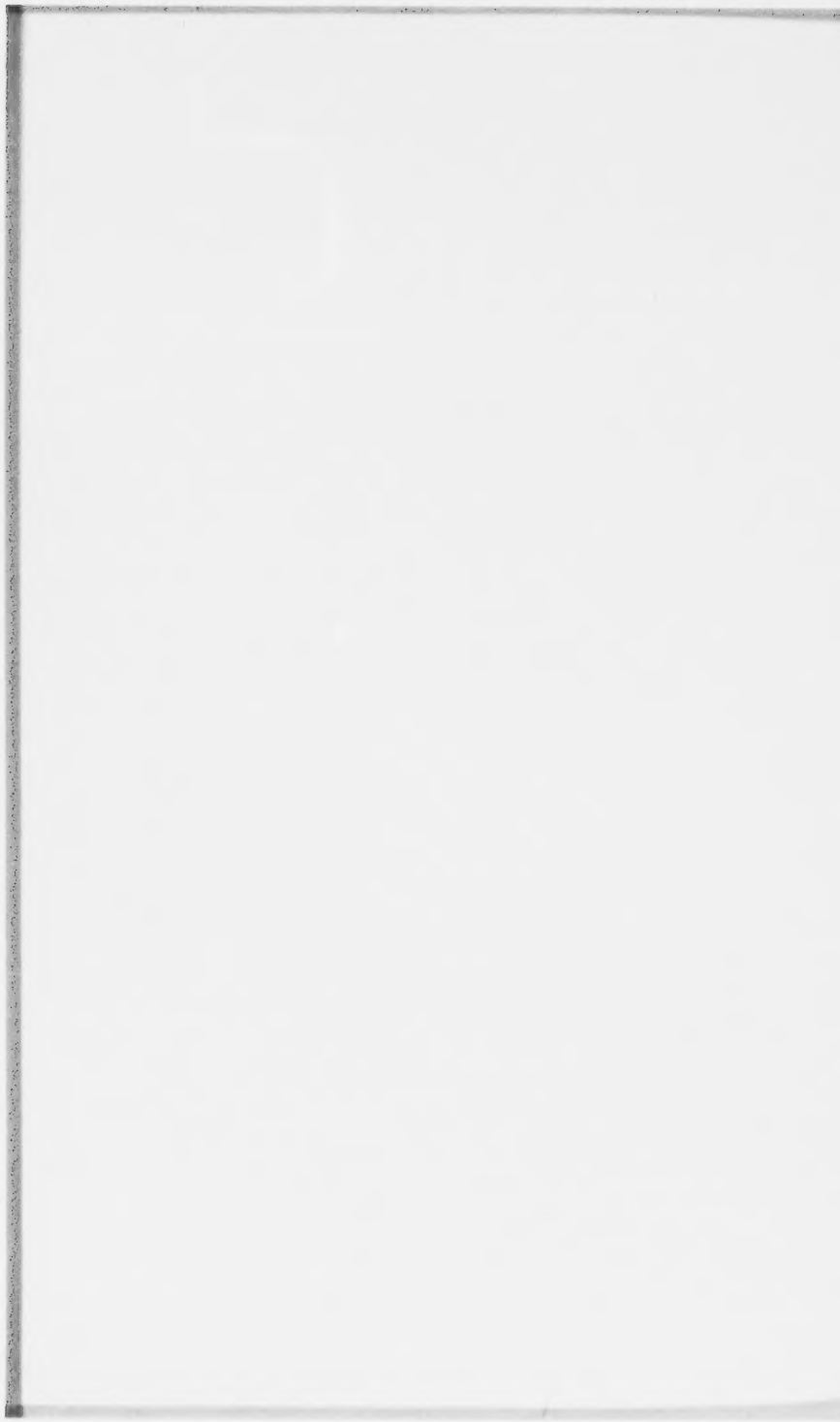
ROMAN OZAETA,
Solicitor General of the Philippines,
Manila, P. I.

ROBERT E. FRIEDMAN,
Assistant Solicitor,
Department of the Interior,
Washington, D. C.
Of Counsel.

February 27, 1941.

[5 cont.] were valid, it has not been included in the specification of errors and could not be urged here. Furthermore, petitioner's bare statement that the decision below is, in this respect, unsupported by the record, is contradicted by the showing in the record that the shares were delivered to the secretary of the company indorsed in blank. Petitioner really objects, not to the lack of substantiating evidence, but to the holding of the lower court as to the legal effect under the local laws of the delivery of the certificate indorsed in blank. It is familiar doctrine that this Court will, in default of a clear showing of error, accept the statement of local law announced by the Territorial Court. *Waialua Agricultural Co.* v. *Christian*, 305 U. S. 91 (1938); *Gauzon* v. *Compañia General de Tabacos*, 245 U. S. 86 (1917).





APPENDIX

Appendix

August 6, 1936

Respectfully returned to His Excellency, the President of the Philippines, with the following comment:

At the very outset, it might be well to recall that there is an administration bill on the subject of inheritance taxation which has been recommended for passage by the National Assembly. That bill, copy of which is hereto attached, revises the schedule of inheritances subject to tax in such a way that the present rates of tax, which range from 1 per cent upon the first ₱10,000 to 16 per cent upon the amount by which the share of inheritance exceeds ₱15,000,000 as the maximum amount, shall be levied upon lesser amounts of inheritance which are so graduated that the maximum rate of 16 per cent shall be applied to shares of the inheritance exceeding ₱2,000,000 only as the maximum amount. It is, however, to be noted that the schedule of inheritances subject to tax as proposed in this administration bill is the same as that provided for in the present law except in respect to shares of inheritance exceeding ₱150,000. In other words, the present rates of tax for shares of inheritance not exceeding ₱150,000 will remain as they are.

In the attached Bill No. 1337, it will be noted that while there is no change in respect to shares of inheritance not exceeding ₱30,000, the rate of 3 per cent is applied to such shares exceeding ₱30,000 but not exceeding ₱50,000; 4 per cent to shares exceeding ₱50,000 but not exceeding ₱80,000; 5 per cent to shares exceeding ₱80,000 but not exceeding ₱110,000; and 6 per cent to shares exceeding ₱110,000 but not exceeding ₱150,000. In other words, Bill No. 1337 modifies the present schedule of rates applicable to shares of inheritance not exceeding ₱150,000. Moreover, the bill would raise the maximum rate of tax on shares of inheritance exceeding ₱2,000,000 from 16 per

cent as proposed in the administration bill to 20 per cent. For a better appreciation of the differences between the schedule of tax rates as proposed in the administration bill and that proposed in the bill under comment (Bill No. 1337), there is reproduced hereunder a comparative table of the tax rates in question:

Under Bill No. 1337			Under administration bill		
Exceeding	Not Exceeding	Rate	Exceeding	Not Exceeding	Rate
Pesos	*Pesos*	*Per cent*	*Pesos*	*Pesos*	*Per cent*
	10,000	1		10,000	1
10,000	30,000	2	10,000	30,000	2
30,000	50,000	3	30,000	50,000	3
50,000	80,000	4	60,000	100,000	4
80,000	110,000	5	100,000	150,000	5
110,000	150,000	6	150,000	200,000	6
150,000	190,000	7	200,000	250,000	7
190,000	240,000	8	250,000	300,000	8
240,000	290,000	9	300,000	350,000	9
290,000	350,000	10	350,000	400,000	10
350,000	420,000	11	400,000	500,000	11
420,000	500,000	12	500,000	700,000	12
500,000	600,000	13	700,000	1,000,000	13
600,000	720,000	14	1,000,000	1,500,000	14
720,000	850,000	15	1,500,000	2,000,000	15
850,000	1,000,000	16	2,000,000		16
1,000,000	1,200,000	17			
1,200,000	1,500,000	18			
1,500,000	2,000,000	19			
2,000,000		20			

It is believed that the rates of tax proposed in the bill under comment are, in the main, exceedingly high, for which reason it is respectfully recommended that the schedule of rates imposed in the administration bill be adopted. At this juncture, attention may be invited to the fact that the rates of tax under discussion constitute only the basic rates applicable to the first class of heirs, namely, the surviving spouse, the legitimate, recognized natural, or adopted child, or legitimate descendant. The second class of heirs consisting of the legitimate parents of the deceased, the legitimate brother or sister of the same, the father or mother who had recognized him as a natural child or any descendant not included in the first class of heirs are required to pay the basic rates with an increase of 100 *per centum*, while other relatives not in-

cluded in the said classes of heirs are required to pay the basic rates with an increase of 200 *per centum*. Finally, strangers who constitute the fourth class of heirs are required to pay the same basic rates of tax with an increase of 300 *per centum*. Consequently under Bill No. 1337, the maximum rate of tax applicable to shares of inheritance corresponding to strangers would be 80 *per centum*. Evidently, this rate of tax is virtually confiscatory.

Section 1 of the bill under comment carries a new paragraph, denominated as paragraph E, wherein it is provided that in addition to the tax provided for in the same section there shall be collected an additional tax of 5 *per centum* on the total net inventoried property left by the decedent if the value thereof is not less than ₱500,000, irrespective of the relation of the beneficiaries to the deceased. This Department objects to the adoption of this new paragraph, for the reason that paragraph (*a*) already provides for the imposition of a progressive inheritance tax, the rates of which vary according to the values of the shares of inheritance involved.

In respect to the other provisions of the bill not to be found in the administration bill, this Department has no objection to offer, as they tend to clarify some of the controversial provisions of the present law.

(Sgd.) A. DE LAS ALAS
Secretary

November 19, 1932

Respectfully returned to the Collector of Internal Revenue, Manila.

Opinion is requested as to "whether or not the estate of the late Robert Henry Wood should pay inheritance tax on shares of stock owned by him at the time of his death in different domestic corporations."

It appears that the deceased Robert Henry Wood was at the time of his death a resident of London, England,

and that, at that time, and for several years prior thereto, he owned a number of shares of stock in Smith, Bell & Co., Ltd., a corporation organized in accordance with the laws of the Philippine Islands. On October 14, 1919, said Robert Henry Wood and other stockholders of the aforesaid company—who are hereinafter referred to as the Partners—executed a deed of trust, whereby they agreed to forthwith transfer their respective shares of stock to two residents of the Philippine Islands, who would be the trustees thereof, and whose duties, among others, would be:

> (*a*) To pay the dividends received by them on the preference shares to the Partners, in the proportion stated in the deed of trust;
>
> (*b*) To apply the dividends received by them on the ordinary shares in the purchase at par, on behalf of the Managers of the Company, or an equivalent amount of the preference shares transferred to said trustees in the aforesaid manner, and to pay the amounts so applied to the purchase of preference shares to the Partners, in the proportion above-referred to;
>
> (*c*) To hold the preference shares so purchased on behalf of the Managers of the company, who would thereafter be entitled to receive the dividends payable thereon, but could have no voting rights, with respect to said shares, until all the preference shares had been so purchased, which voting rights would, in the meantime, be exercised by the Trustees as the Partners or their respective representatives may direct.

The deed of trust also provided that:

> "10. If and so soon as the whole of the preference shares shall have been paid off, the whole of the ordinary shares and also any moneys including any interest or income on any such deposits or investments as aforesaid remaining in the hands of the Trustees shall be distributed among the then Managers in proportion to their then interests in the profits."

It is apparent that the shares of stock in question fall under section 1536 of the Revised Administrative Code, the pertinent portion of which reads as follows:

> "SEC. 1536. *Conditions and rate of taxation.*—Every transmission by virtue of inheritance, devise, bequest, gift *mortis causa* or advance in anticipation of inheritance, devise, or bequest of real property located in the Philippine Islands and real rights in such property; of any franchise which must be exercised in the Philippine Islands; *of any shares, obligations, or bonds issued by any corporation* or *sociedad anónima organized or constituted in the Philippine Islands in accordance with its law;* of any shares or rights in any partnership, business, or industry established in the Philippine Islands, or of any personal property located in the Philippine Islands shall be subject to the following tax:"

But, some doubts seem to have been entertained as to whether said provision could be validly applied to said shares of stock, in view of the decisions in First National Bank of Boston *v.* State of Maine (promulgated on January 4, 1932), Farmers Loan and Trust Co. *v.* Minnesota (280 U. S. 211, 74 L. ed. 374), and Baldwin *v.* Missouri (281 U. S. 586), in which cases the Supreme Court of the United States applied the rule of *mobilia sequuntur personam* and held that a state could not tax the transfer by death of intangible property of a nonresident.

In the first case, the Court, however, had the following to say:

> "*We do not overlook the possibility that shares of stock,* as well as other intangibles, *may be so used in a state other than that of the owner's domicile as to give them a situs analogous to the actual situs of tangible personal property.* See Farmers Loan Company case, *supra,* at p. 215. That question heretofore has been reserved, and it still is reserved to be disposed of when, if ever, it properly shall be presented for our consider-

ation." (First National Bank of Boston *vs.* State of Maine, January 4, 1932, No. 171—October term, 1931, Advanced Decisions of the Supreme Court of the United States.)

In the second case the property in question consisted of negotiable bonds and certificates of indebtedness issued by the State of Minnesota and the cities of Minneapolis and St. Paul, *kept by its deceased owner in New York*, the State of his domicile, and *having no connection whatsoever with business carried on by or for the decedent in Minnesota*. The Court said:

"* * * no state may tax anything not within her jurisdiction without violating the Fourteenth Amendment. * * * Also no state can tax the testamentary transfer of property *wholly* beyond her power (Rhode Island Trust Co. *vs.* Doughton, 270 U. S. 69), or impose death duties reckoned upon the value of tangible *permanently* located outside her limits.

"* * * * * * *

"* * * choses in action may acquire a situs for taxation other than at the domicile of their owner *if they have become integral parts of some legal business.*

"* * * * * * *

"*The bonds and certificates of the decedent had acquired permanent situs for taxation in New York;* their testamentary transfer was properly taxable there but not in Minnesota." (Farmers Loan and Trust Co. *vs.* Minnesota, 280 U. S., 204, 210, 213.)

And the property sought to be taxed in the third case consisted of credits for cash deposited with several banks located in the State of Missouri and certain coupon bonds issued by the United States and sundry promissory notes which were then physically within that State. Its owner died, however, while a resident of Illinois and *it did not appear that she ever resided in Missouri or that said property had been given a business situs in the latter State.* An

inheritance tax was demanded upon said property under a Missouri law, but the Court said:

> "*Ordinarily*, bank deposits are mere credits and for purposes of ad valorem taxation have situs at the domicile of the creditor only. The same general rule applies to negotiable bonds and notes whether secured by liens and real estate or otherwise.
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> "* * * * * * *
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> "The bonds and notes, although physically within Missouri under our former opinions were choses in action with situs at the domicile of the creditor. At that point they too passed from the dead to the living, and there this transfer was actually taxed. As they were not within Missouri, for taxation purposes the transfer was not subject to her power. Rhode Island Trust Co. v. Doughton, 270 U. S. 69." (Baldwin *vs.* Missouri, 281 U. S. 586, 391, 393.)

In short, the property in question in said three cases were found to have *no business situs outside the State of the domicile of its owner*. Moreover, an inheritance tax had been paid in that State for the transfer of the aforesaid property, and the right of another State to tax the same transfer was denied on the ground of double taxation.

But, it does not appear that an inheritance tax has been paid in England upon the shares of stock of the late Robert Henry Wood in Smith, Bell & Co., Ltd. And it appears that said shares of stock were kept in the Philippine Islands, under the immediate and direct control of the Trustees, who were, and still are, residents of said Islands. In view of the provisions of clause (7) of the deed of trust, said shares of stock were transferred to the name of the Trustees, who, thus, became the holders of the legal title to said property, and the same acquired a business situs in the Philippine Islands. Hence, the rule laid down in the cases above mentioned cannot be applied to the case under consideration.

The decision in Safe Deposit and Trust Co. *vs.* Virginia (280 U. S. 83), is squarely in point. In that case it was held that a fund of stocks and bonds which one Lucius J. Kellam, domiciled and residing in Virginia, had transferred to a Maryland trust company in trust for his two minor sons, was taxable in Maryland, and not in Virginia. Said the court:

> "Manifestly, the securities are subject to taxation in Maryland, where they are in the actual possession of the Trust Company—holder of the legal title. * * *
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> "* * * * * * * *
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> "Ordinarily this Court recognizes that the fiction of *mobilia sequuntur personam* may be applied in order to determine the situs of *intangible* personal property for taxation. * * * *But the general rule must yield to established fact of legal ownership, actual presence and control elsewhere, and ought not to be applied if so to do would result in inescapable and patent injustice.* Here, where the possessor of the legal title holds the securities in Maryland, thus giving them a permanent situs for lawful taxation there, and no person in Virginia has present right to their enjoyment or power to remove them, the fiction must be disregarded. It plainly conflicts with fact; the securities did not and could not follow any person domiciled in Virginia. Their actual situs is in Maryland and can not be changed by the *cestui que* trustent.
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> "* * * * * * * *
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> "Tangible personal property *permanently* located beyond the owner's domicile may not be taxed at the latter's place * * * Intangible property may acquire a taxable situs where permanently located, employed and protected." (Safe Deposit & T. Co. *vs.* Virginia, 280 U. S. 83, 91, 92.)

In State Board of Assessors *vs.* Comptoir National D'Escompte (191 U. S., 388, 403-404), the same Court under similar circumstances, said:

> "From these cases it may be taken as the settled law of this court that there is no inhibition in the Federal Constitution against the right of the state to tax prop-

erty in the shape of credits where the same are evidenced by notes or obligations held within the State, in the hands of an agent of the owner for the purpose of collection or renewal, with a view to new loans and carrying on such transactions as a *permanent business.*

"The maxim, *mobilia sequuntur personam,* which was applied in the court below as forbidding taxation of the checks in the hands of the agent in New Orleans, has been frequently held to be but a fiction of law, having its origin in considerations of general convenience and public policy, and not to be applied to limit and control the right of the State to tax property within the jurisdiction, it being intended to permit the owner to deal with his personalty according to the law of his domicile, and to make testamentary disposition of it according to the law where he is rather than that of the situs of the property. *It was intended for convenience, and not to be controlling where justice does not demand it.*" (State Board of Assessors *vs.* Comptoir National D'Escompte, 191 U. S., 388, 403-404.)

And, in De Ganay *vs.* Lederer (250 U. S., 376, 381-382), the Court used the following language:

"It is insisted that the maxim *mobilia sequuntur personam* applies in this instance, and that the situs of the property was at the domicile of the owner in France. But this court has frequently declared that the maxim, a fiction at most, must yield to the facts and circumstances of cases which require it; and that notes, bonds and mortgages may acquire a situs at a place other than the domicile of the owner, and be there reached by the taxing authority. It is only necessary to refer to some of the decisions of this court. New Orleans v. Stempel, 175 U. S. 309; Bristol v. Washington County, 177 U. S. 133; Blackstone v. Miller, supra; State Board of Assessors v. Comptoir National D'Escompte, 191 U. S. 388; Carstairs v. Cochran, 193 U. S., 10; Scottish Union & Nations Ins. Co. v. Bowland, 196 U. S. 611; Wheeler v. Sohmer, 233 U. S. 434, 439; Iowa *vs.* Slimmer, 248 U. S., 118, 120. Shares of stock in national banks, this court

> has held, for the purpose of taxation may be separated from the domicile of the owner, and taxed at the place where held. Tappen *vs.* Merchants' National Bank, 19 Wall, 490." (De Ganay *vs.* Lederer, 250 U. S. 376, 382.)

It is, therefore, a well established rule that a State may tax the transfer by death of intangible property of a resident of another State, if said property has acquired a business situs in the former State. And, accordingly, the shares of stock in question are taxable in the Philippine Islands.

Moreover, the maxim *mobilia sequuntur personam* cannot be applied to the case under consideration without holding section 1536 of the Revised Administrative Code unconstitutional in so far as it seeks to tax the transfer of said shares of stock. But the rule is that "every statute is presumed to be constitutional. * * * If there is doubt, the expressed will of the Legislature should be sustained." (Munn *vs.* Illinois, 94 U. S., 123; U. S. *vs.* Grant and Kennedy, 18 Phil. 122, 140).

> "In assailing the constitutionality of a State statute the burden rests upon appellant to establish that it infringes the constitutional guarantee which he invokes. If the state court has not otherwise construed it and it is susceptible of an interpretation which conforms to constitutional requirements, doubts must be resolved in favor of, and not against the state. See Corporation Commission of Oklahoma, etc. v. Lowe, etc., ante, p. 431; South Utah Mines v. Beaver County, 262 U. S., 325, 331." (Toombs v. Citizens Bank, 281 U. S., 643, 647).
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> "* * *. An infraction of the constitutional provision is not to be assumed. On the contrary, it is to be presumed that the State in enforcing its local policies will conform its requirements to the Federal guarantees. Doubts on this point are to be resolved in favor of, and not against, the State. Grenada County Supervisors v. Brogden, 112 U. S., 261; 269; St. Louis, Southwestern

Railway Company v. Arkansas, 235 U. S. 350, 369; Hendrick v. Maryland 235 U. S. 610, 621; Pullman Co. v. Richardson, 261 U. S. 330; 340; South Utah Mines v. Beaver County, 262 U. S. 325, 331." (Corporation Commission v. Lowe, 281 U. S. 431, 438).

In view of the foregoing, this Office is of the opinion that the shares of stock of the late Robert Henry Woods in Smith Bell & Co., Ltd., are subject to inheritance tax.

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